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Marlene S. Dortch, Esq.
Secretary
Federal Communications Commission
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Re: WT Docket No. 02-55
Ex Parte Statement

Dear Ms. Dortch:

The National Association of Manufacturers and MRFAC, Inc. present this additional information relative to the above-referenced proceeding. This letter hereby provides additional information on protections for incumbent licensees in the event the Commission should determine upon re-banding in some form.

Waivers

The Commission is bound as a matter of law to consider waiver requests. WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969)(agency must give a "hard look" to well-pled waiver requests). Hence, the issue is not whether to consider such requests, but whether it is fair to omit reference to that obligation in an otherwise voluminous order affecting in myriad, unpredictable ways hundreds of licensees -- many of whom have little familiarity with this proceeding.

This is not to say that waivers should be routinely granted. On the contrary, given the scope and complexity of any re-banding, the standard for a waiver must assuredly be high. For example, certain waiver requests (such as to retain a particular channel or channels even in the face of full comparability on the new channels, and without any showing of material adverse impact) could be easily disposed of. On the other hand, where the timing of a particular relocation would uniquely impact a licensee, a waiver of some sort might well be appropriate. Thus, it is important that the Commission specify in its report and order the standard against which any waiver requests will be considered in order to ensure that the process not be hijacked by any one licensee or group.

Incumbent Protections

In addition to the protections afforded by Rule 90.699 (and the waiver process in exceptional cases), any re-banding should include provision for implementation of temporary, redundant systems in those cases where an incumbent's operations would be disrupted absent such relief. Moreover, the equipment supplied for parallel systems during re-banding should provide features and capabilities comparable to those for the system being replaced. Accommodations like this should be available to B/I/LT licensees, no less than to public safety licensees, where necessary. Nextel itself has contemplated providing this type of relief. See Supplemental Comments of the Consensus Parties, filed December 24, 2002 at Appx. A, note 3 (budgeting "an allowance for cases requiring duplicate interim construction").

Border Areas

Finally, a word about the border issue. In the border areas the US, by treaty with Mexico and Canada, has primary access to only half the spectrum available in the rest of the country. Despite assurances to the contrary, negotiations will almost surely be necessary as a part of any re-banding along the borders, and not merely as a matter of comity. For example, Industry Canada is on record as stating that new mutual aid channels will "need to be negotiated"; that "major disruptions in the operation of systems along the border" will be created; and that "[public safety] operations [US and Canadian] in the border area will be compromised." See Comments filed October 29, 2003 at p. 5, 11. Cross-border coordination with Mexico and Canada has been a time-consuming, even arduous, process in the past, and is likely to be equally time-consuming in the future. If the Commission should determine upon re-banding without having initiated, much less completed, coordinations with Canada and Mexico, re-banding in the border areas could be significantly delayed. This could impact licensees both within and without the border areas. The safety valve of a waiver process could thus be particularly important for border area licensees.

An original and one copy of this letter are supplied for inclusion in the Docket.

Sincerely,

/s/ William K. Keane

William K. Keane
NAM/MRFAC Counsel

Marlene H. Dortch, Esq.
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